

**IN THE UNITED STATES DISTRICT COURT
EL PASO DIVISION
EL PASO, TEXAS**

UNITED STATES OF AMERICA)	
)	
v.)	Cause No. EP-19-CR-01411(1)-DCG
)	
FACUNDO HERNANDEZ-MORENO)	

MOTION FOR THE RELEASE OF DEFENDANT’S MEDICAL RECORDS

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the Defendant, FACUNDO HERNANDEZ-MORENO, through his court-appointed counsel, VICTOR SALAS, in the above styled and numbered cause, and respectfully moves the Court to order the custodians of records for the El Paso County Detention Facility and the University Medical Center of El Paso, Texas to release all medical records pertaining to Defendant since his arrest and detention on April 14, 2019.

I.

Defendant is being held without bond by the U.S. Marshall at the El Paso County Detention Facility in El Paso, Texas, since his arrest for Illegal Re-Entry pursuant to 18 USC §1326 and Using A False Passport pursuant to 18 USC §1543. A plea and sentencing hearing was set for June 7, 2019. Defendant and Defense counsel appeared at the hearing and requested a continuance. The Plea and Sentencing granted the Motion for Continuance.

II.

Defendant’s Plea and Sentencing Hearing was reset due to an illness that Defendant is experiencing. Defendant began experiencing flu-like symptoms on Thursday, May 30, 2019. A cell mate submitted a jail medical attention request form on behalf of Defendant on May 30, 2019.

No medical attention was provided to Defendant until Saturday, June 1, 2019 at about 2:00

p.m. Defendant was give 2 pills and returned to his cell.

On Sunday, June 2, 2019, Defendant woke up feeling worse than the day before. Cell mates advised the jail guards. The Jail Clinic nurse supposedly paced by Defendant's cell, but did not attend to Defendant. The Jail Nurse gave Defendant 2 pills at about 3:00 or 4:00 p.m.

Defendant stood up at about 5:00 p.m. on Sunday, June 2, 2019 and ended up collapsing and falling to the floor. He had a fever, body aches and was sweating. Cell mates call the guards who responded 15-20 minutes later. Jail Guards began administering CPR. Defendant was taken to University Medical Center.

Defendant was returned to the County Jail at about 10:00 p.m. on Sunday, June 2, 2019. Defendant was taken to the Jail Clinic where he was observed, his vitals were taken, and was returned to his cell.

On Monday, June 3, 2019, Defendant woke up in pain and was given some medication. Defendant states that the nurse stated that he was not in the system.

On Tuesday, June 4, 2019, Defendant was given medication (6 pills) in the morning and (7 pills) in the afternoon.

On Wednesday, June 5, 2019, Defendant was taken to the Jail Clinic at about 9:00 a.m. with pain to the right side of his face and pain to his back. Doctor stated that he was not in the system and returned Defendant to his cell. At about 5:00 or 6:00 p.m. on Wednesday, June 5th, Defendant was taken to the Jail Clinic because he could not eat due to throat pain. Nurses once again told Defendant that he was not in the system, but appeared to find a paper file for Defendant.

III.

Defendant prays that this Court issue grant this motion and Order the custodians of record for the El Paso County Detention Facility and University Medical Center to provide Defense counsel

with all of Defendant's medical records since Defendant detention on April 14, 2019.

WHEREFORE, premises considered, the Defendant prays that this Honorable Court will grant this Motion in all things.

Respectfully submitted,

SALAS & SALAS, L.L.P.

/s/VICTOR SALAS
1500 Montana Avenue
El Paso, Texas 79902
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State Bar # 00784895

CERTIFICATE OF SERVICE

I hereby certify that opposing is a known electronic filer, and Notice of Electronic Filing of the foregoing instrument will be delivered to the United States Attorney's Office, 700 E. San Antonio, Second Floor, El Paso, Texas 79901, on this 7th day of June, 2019.

/s/ VICTOR SALAS

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ORDER AUTHORIZING RELEASE OF MEDICAL RECORDS

On this _____ day of June 2019, came on the be considered the Motion for the Release of Defendant's Medical Record of the Defendant, FACUNDO HERNANDEZ-MORENO, and the Court having considered the same, is of the opinion, that the same should be GRANTED.

VICTOR SALAS is the attorney of record representing the defendant FACUNDO HERNANDEZ-MORENO, in the above styled and numbered case.

THE COURT HEREBY FINDS that in order to properly and effectively represent the defendant in the above styled and numbered case and to ensure the defendant is medically and mentally able to assist the defense counsel with the preparation of the defendant's defense, the defense counsel named above needs access to the defendant's medical records, to include mental health records, maintained by the El Paso County Detention Facilities and its contracted medical and mental health providers, University Medical Center (UMC), University of Texas Medical Branch (UTMB) and Emergence Health Network (EHN).

THE COURT FURTHER FINDS that in order to properly and effectively represent the defendant in the above styled and numbered case and to ensure the defendant is mentally able to assist the defense counsel with the preparation of the defendant's defense, the defense counsel

named above needs access to the defendant's mental health and/or intellectual disability records maintained by EHN in its capacity as the Local Mental Health and Intellectual Disability Authority.

THUS, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the defense counsel named above is authorized to receive protected medical, mental health and/or intellectual disability information and records concerning the defendant from the El Paso County Detention Facilities and its contracted medical and mental health providers (UMC, UTMB and EHN), and EHN in its capacity as the Local Mental Health and Intellectual Disability Authority. The information disclosed under this order shall be limited to information created no earlier than April 14, 2019 and continuing as long as this order is in effect regarding defendant's diagnosis and date of diagnosis, dates of treatment and any dates of prospective treatment, current medications and dosage, and the name of the practitioner (M.D., D.O., P.A., N.P., etc.) providing treatment. If EHN has information regarding a diagnosis for intellectual disability, regardless of date, such information shall be disclosed. Nothing in this order shall be construed as requiring these entities to disclose under this Order any information regarding HIV/AIDS or drug or substance abuse, where subject to 42 CFR Part 2.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the El Paso County Detention Facilities and its contracted medical and mental health providers (UMC, UTMB and EHN), and EHN in its capacity as the Local Mental Health and Intellectual Disability Authority, upon request by the defense counsel, shall disclose to the defense counsel named above requested protected medical, mental health and/or intellectual disability information concerning the defendant, as limited by the preceding paragraph.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the released protected medical, mental health and/or intellectual disability information and records may only be used by the defense counsel to assist in the defense of the defendant in the above styled and numbered case

and/or continuity of care purposes, and for no other use. Counsel is ordered to comply with the requirements of Texas Health and Safety Code Chapter 181.

IT IS FURTHER AUTHORIZED BY THE COURT that the El Paso County Criminal Justice Coordination Office may release information and documents in its possession, including medical and mental health information, to the above named defense counsel to facilitate counsel providing effective legal assistance to the accused in the above entitled and numbered cause.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this Order shall automatically expire upon the withdrawal of the defense counsel named above or the conclusion of the above styled and numbered case, whichever occurs sooner.

SIGNED, and ENTERED this _____ day of June, 2019.

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE